

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of**  
**SUZANNE D. CASE**  
**Chairperson**

**Before the Senate Committee on**  
**JUDICIARY**

**Friday, February 22, 2019**  
**9:00 AM**  
**State Capitol, Conference Room 016**

**In consideration of**  
**SENATE BILL 1371, SENATE DRAFT 1**  
**RELATING TO LAY NETS**

Senate Bill 1371, Senate Draft 1 proposes to prohibit the use of lay nets to take aquatic life, except under a permit obtained by the Department of Land and Natural Resources (Department) and establishes the use of lay nets to take aquatic life as a misdemeanor offense with a mandatory minimum period of imprisonment of one day or, for a first offense, a fine of no less than \$1,000. **The Department supports this bill and offers the following comments.**

The Department regulates lay net fishing through detailed restrictions on net dimensions, mesh size, soak time, time of day, frequency between sets, location, water depth, and inspection requirements. In addition, all lay nets are required to be registered with the Department and marked with identification tags and surface buoys. Despite these detailed regulations, which are intended to ensure responsible use of lay nets, the irresponsible use of lay nets continues with adverse impacts to both fishery resources and protected species.

In April 2018, the Assistant Regional Administrator of the National Marine Fisheries Service (NMFS) wrote a letter to the Department expressing concern regarding the “significant threat to Hawai‘i’s sea turtles and monk seals posed by unattended lay gill nets” (see attached). In the Main Hawaiian Islands, 96 turtles were found dead in lay gill nets from 1990 through 2016. During that same period, lay gill nets were indicated as a probable or contributing cause of death in dozens more turtle stranding cases. From 1994 through 2017, five Hawaiian monk seals were found dead in lay gill nets, and entanglement in lay gill net was the suspected cause of death in an additional five monk seal cases during that same period. Additionally, many more seals and turtles would have likely died entangled in unattended lay gill nets were it not for the rescue efforts of state and federal agencies and partners.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Just last month, a young green sea turtle was found dead in an abandoned lay gill net in Punaluu, Oahu. That same net contained a number of rotting fish, which went to waste. The fact that lay net violations (and their associated impacts on aquatic resources) continue with such frequency suggests that harsher penalties and tighter management are warranted.

The Department supports the concept of a permit requirement for the use of lay nets. The current lay net registration system is problematic for two reasons. First, nets are only required to be registered once, and there is no annual renewal requirement. As a result, the Department has no way to track how many registered nets are still in use. A legislatively authorized permit system would allow the Department to issue annual lay net permits to individuals, and to track which individuals use lay nets. Second, unlike a permit, a registration is not revocable. The Department has no way of prohibiting a person from registering new lay nets if they have been convicted of lay net violations. Under a permit system, lay net users have a greater incentive to comply with the law because they could lose their permit if convicted of a violation.

Thank you for the opportunity to comment on this measure.



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Pacific Islands Regional Office  
1845 Wasp Blvd., Bldg. 176  
Honolulu, Hawaii 96818  
(808) 725-5000 • Fax: (808) 725-5215

Ms. Suzanne Case  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, HI 96813

**APR 24 2018**

Dear Suzanne:

I am writing on behalf of the National Marine Fisheries Service to share our concerns regarding the significant threat to Hawai'i's sea turtles and monk seals posed by unattended lay gill nets. Our respective staff and partners respond to numerous stranded sea turtles and monk seals every year in the main Hawaiian Islands (MHI), and many of these strandings involve entanglement in the type of monofilament netting associated with lay gill nets.

A review of our MHI sea turtle stranding data indicates 96 turtles were found dead in lay gill nets from 1990 through 2016. During that same period, lay gill nets were indicated as a probable or contributing cause of death in dozens more turtle stranding cases. Our MHI monk seal data indicate five seals were found dead in lay gill nets from 1994 through 2017, and entanglement in lay gill net was the suspected cause of death in an additional five monk seal cases during that same period. Of the 10 total seal deaths associated with lay gill nets since 1994, four occurred in just the past two years.

The actual number of MHI seal and turtle deaths caused by unattended lay gill nets is likely higher than indicated by our data because most deaths are unreported or cannot be attributed to a specific cause. Additionally, many more seals and turtles would have likely died entangled in unattended lay gill nets were it not for the rescue efforts of our staff and partners.

We note that about a decade has passed since the Department of Land and Natural Resources (DLNR) revised its administrative rules regulating the use of lay gill nets, in part to address concerns regarding interactions with protected species. However, considering the ongoing impacts to sea turtles and monk seals, we believe additional conservation measures regarding unattended lay gill nets are still needed.

We want to be clear that the concerns referred to in this letter are focused on a specific type of net and method, i.e., monofilament lay gill nets that are set and left unattended. We recognize there are other net fishing methods used in the MHI that do not appear to currently cause significant impacts to seals and turtles when used legally and responsibly.

We highly value our collaboration to date with the DLNR regarding the conservation of several protected marine species in Hawai'i, including sea turtles and monk seals. We also want to acknowledge our growing partnerships with fishermen and fishing organizations across the state, and we want to express how important it is that we do our part to maintain and improve these partnerships. We look forward to working together with the DLNR, Hawai'i's fishermen, and other stakeholders to address the serious conservation issue caused by unattended lay gill nets.

While the focus of this letter is on unattended lay gill nets, I want to mention that we are also concerned about seal and turtle interactions with shore-based hook and line fishing methods, such as slide-bait fishing, that entail setting out baited hooks for extended periods of time. In addition, we are seeing



concerning evidence of nearshore fishery interactions with the listed Hawai'i insular stock of false killer whales. In the near-term, it may be most appropriate to address the specific concerns regarding unattended lay gill nets as a singular issue, but I believe we should have a longer-term goal of working together to develop a comprehensive.

APR 27 2018

Sincerely,



Ann M. Garrett  
Assistant Regional Administrator  
Protected Resources Division

RECEIVED

2018 APR 27 AM 10: 26

DEPT OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII



**LATE**

**SB1371 SD1**  
**RELATING TO LAY NETS**  
Ke Kōmike Ho'okolokolo o Kenekoa

Pepeluali 22, 2019

9:00 a.m.

Lumi 'Aha Kūkā 016

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB1371 SD1, which would prohibit the deployment and retrieval of a stationary gill net in state waters, otherwise defined as “lay net.” **OHA appreciates the intent of this measure in protecting and perpetuating our nearshore marine resources, and further appreciates the express recognition and accommodation of Native Hawaiian traditional and customary practices, which may encompass certain activities that may otherwise be prohibited under this measure. OHA does note potential practical enforceability issues and offers suggested amendments for the committee’s consideration that may provide protections against irresponsible net use.**

OHA understands and appreciates this measure’s intent to address longstanding environmental and cultural concerns over the irresponsible and inappropriate use of gill nets in our nearshore marine waters. **The advent of plastic monofilament fishing line, or “suji,” in the mid-twentieth century gave rise to the broad availability and use of relatively inexpensive gill mesh nets, which could be deployed indiscriminately across hundreds of yards or more of shallow reef, left alone for hours or even overnight, and even abandoned due to unexpected weather or surf conditions or, for resource violators, potential encounters with resources enforcement officers – without significant costs or risks.** The resulting irresponsible and inappropriate use of such nets, which results in the indiscriminate take of both desired and undesired species, uncontrolled levels of harvest, and even long-term ecological damage due to the breakage of or, in the case of abandonment, smothering of coral and “ghost-fishing” of other marine life, has had and continues to have the potential for significant impacts to nearshore resources, as well as associated Native Hawaiian traditional and customary gathering and subsistence practices. The inappropriate nature of such irresponsible modern netting practices is particularly highlighted when compared to traditional gill net uses: carefully crafted and maintained nets would be intentionally set and often actively used, practices informed in part by the significant setback that a damaged or lost net would represent to pre-twentieth century fishers. Notably, certain Native Hawaiian communities have specifically identified irresponsible “cross-netting” or lay net fishing as a primary cause of the depletion of their local fisheries.

Accordingly, OHA again expresses its appreciation for the apparent intent behind this measure, to facilitate the restoration and ensure the sustainability of ecologically and culturally important marine species, and better protect our nearshore environment from the ecological impacts of irresponsible gill net practices.

OHA does note that the definition of “lay net” in this measure may encompass Native Hawaiian traditional and customary practices that involve the deployment and subsequent retrieval of a stationary gill net, such as pa’i pa’i netting or the setting of a net across a sandy channel at night, with fishers actively monitoring the net and removing fish and bycatch once entangled. While such practices do not pose the aforementioned harms associated with irresponsible and inappropriate gill netting, they may nonetheless be interpreted as “deploy[ing] in the water in a specific location and retriev[ing] from the same location after a certain time period has passed to allow for the capture of aquatic life.” Cultural practitioners engaged in such active netting practices would also be more likely to be present, cited, and subject to the minimum imprisonment term than non-practitioners and particularly irresponsible netters, who depart from their nets after setting them, and who may even choose to abandon their nets once they suspect or ascertain the presence of resources enforcement officers. **Accordingly, OHA greatly appreciates the amendments made to this measure, which would protect Native Hawaiian traditional and customary practitioners from liability for practices that may constitute “lay net” fishing as defined under this measure.**

OHA further notes that this measure may encounter similar enforcement challenges as existing Department of Land and Natural Resources (DLNR) rules regulating the “use” of the “lay net fishing method.” As “lay net” is defined in this measure, in order to establish a violation of this measure’s lay net prohibition, admissible evidence must be established demonstrating that 1) a person 2) for the purpose of taking aquatic life 3) deploys a gill net in a set location and 3) the same person 4) retrieves the gill net 5) from the same location 6) after a certain time period has passed. The simple presence of a net in the water would not be sufficient to convict an individual under the proposed provision; evidence would be needed to demonstrate an individual both set a net and actually retrieved it from the same location, for the specific purpose of taking aquatic life. As lay nets may be set for hours, overnight, or even longer, it would potentially take considerable law enforcement resources to monitor a set net in order to interdict the person retrieving it, who may in fact abandon the net if they sense any law enforcement presence. Accordingly, should the Committee choose to move this measure forward, OHA respectfully recommends consultation with DLNR’s conservation and resources enforcement, aquatic resources staff, and the attorney general’s office to determine provisions which can most directly address the harms posed by irresponsible and inappropriate gill netting practices, and avoid the significant challenges the DLNR has faced in enforcing its currently drafted lay net rules and requirements.<sup>1</sup>

Mahalo nui loa for the opportunity to testify on this measure.

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<sup>1</sup> For example, in recognition of the difficulty of proving “use” violations, the most recent Hā’ena community based subsistence fishing area rules prohibit panel gill nets generally (i.e. the net type used in lay netting, as well as other netting methods), while explicitly allowing the use of gill mesh nets via the pa’i pa’i method or surround net method, where “at least two people must be within five feet of the net at all times when it is deployed.” See HAR § 13-60.8.

**SB-1371-SD-1**

Submitted on: 2/18/2019 9:55:08 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa L Nakama	Testifying for BIFA	Oppose	No

Comments:

BIFA (Big Island Fisheries Alliance) and its members hereby strongly oppose SB1371 SD1. The rule change will make innocent fisherman criminals in what has been traditional fishing methods used by lawful abiding responsible citizens of Hawaii. "Hawaii State Constitution Article 11 Sec 6.....All fisheries in the sea waters of the State not included in any fish pond, artificial enclosure or state-licensed mariculture operation shall be **free to the public, subject to vested rights**"

This bill has never been properly vetted with the majority of our fishing communities nor have they been given proper notice of what will have a negative impact feeding their families and become a financial burden on their livelihood.

These changes in the existing law must not be moving through the legislative procedure without proper public consultation process with the majority of the public so their voices shall be heard. We ask that this legislative body give advance notification and go through the various channels of the consultation process with The Office of Hawaiian Affairs, Association of Hawaiian Civic Clubs, Kalahui, Kahea, State GMAC, Hawaii County GMAC, Fishing organization PGIF, HFACT, Maui Aha Moku Councils, the Aha Moku Councils of all Islands, all other hunting organizations that are also fisherman, and most importantly the vast wholesale and retail fishing-related businesses that will have a negative effect in their finances that pays into our general excise tax.

Respectfully Submitted,

Teresa L. Nakama

Chairperson-BIFA



## OPPOSE SB1371

The Hunting, Farming and Fishing Association opposes SB137 Relating to Lay Nets.

We oppose this measure due to the fact that nets are a method used to provide food for families and communities and the measure does not provide adequate reason to regulate these nets. The current regulations that are in place have changed significantly throughout the past 10 years. Each year, there are new regulations that are proposed and supported by the Department of Land and Natural Resource to include restrictions on soak time, net length, water depth, time of day, mesh size, and inspection requirements. Each new bill has been proposed by the Department based on the understanding that these new regulations can be enforced. The Department's justification in regard to this bill is that they are unable to regulate the current regulations implemented in the last few years, the lay nets harm the environment, and the bycatch problem has not been resolved. However, their data is based on bycatch caught since the 1990s. This is not the fault of individuals that have adjusted and complied with the current regulations. This is a lack of effort on by the Department to accept and work with individuals that use this method to gather food.

The lay net method to gather food has been in existence for more than 50 years. The lay net is, and continues to be, a traditional method to gather food that has been passed down through generations. Fishing has changed since 1778, and today we have many new methods to gather fish to feed our families. This, like many types of fishing methods, is becoming a dying art with far fewer individuals participating and more government regulations limiting access and methods of gathering. If this measure passes, we will effectively destroy a traditional practice used to feed families.

Bycatch happens and needs to be addressed. No matter the method, there will be bycatch. Using hook and line also results in bycatch to include turtles and monk seals. The department and other federal agencies created a proactive campaign to encourage fishermen to de-hook and call in accidental catches. How many individuals state wide have accidentally hooked turtles or monk seals in the last 5 years, and how many of these accidental hooking resulted in death? The department has implemented regulations in the last 5 years that are supposed to reduce bycatch. Where are the results from the department since the regulations have been imposed and assumed to be regulated? Were the seals and turtles a result of law-abiding lay netters or illegal lay netters? This needs to be addressed.

Hawaiian practice and tradition evolved with technology to include the use of lay nets. Hawaiians culture was built on utilizing the resources to feed families and enhance living conditions. To assume that the Hawaiians lived a perfect symbiotic relationship with the environment is not true, as can be pointed out with Kamehameha and the sandalwood trade in the late 1800s into the early 1900s. Kamehameha had harvested sandalwood to the point of extinction to build wealth.





P.O. Box 240353, Honolulu, HI 96824 Phone: 808-780-1253

Hawaiians continue to maintain Hawaiian tradition by using their resources to feed families and enhance living conditions. We have embraced technology and improved our method of gathering from our resources with the use of the lay net. The lay net is now an important part of our culture.

The Hunting, Farming and Fishing association have seen many rules and regulations proposed each year to address public opinion and assumptions without sound justification. We have seen fishermen and fishing methods villainized without an understanding or willingness to seek understanding. If we allow this bill to pass, we are destroying a piece of our culture and taking food from individuals without just cause. We cannot continue to add fishing regulations that slowly take away our ability to gather from our resources and takes away from the traditional cultural practices of Hawaii.

Mahalo,

Makani Christensen

**SB-1371-SD-1**

Submitted on: 2/21/2019 8:26:15 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

**SB-1371-SD-1**

Submitted on: 2/21/2019 9:06:01 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dean Sensui	Testifying for Hawaii Goes Fishing	Oppose	No

Comments:

Lay nets are a legitimate and sustainable fishing method, allowing fishermen to harvest the amount of fish needed to feed their families.

I have observed and filmed the responsible use of lay nets when “pai pai” fishing was demonstrated in Milolii for the TV show, “Hawai’i Goes Fishing”. The net was actively fished, with any unwanted bycatch released without harm.

There are existing regulations that were crafted to ensure the proper use of these nets. Some of the reasoning behind those regulations were to protect against unwanted entanglement by turtles, seals and other marine life. Nets have to be tagged so potential violators could be identified. And limits to the times and periods of their use were also established.

The problem, as noted by others, is when they’re used illegally and recklessly. The same can be said for other fishing methods including throw nets, spears and even hook-and-line. What matters is not the method, but the rate of harvest or total take. Some fisheries use bag limits for individual fishermen. Other fisheries use annual catch limits for the whole fishery. When these limits are observed, the resource is protected against overfishing, regardless of the method.

It’s not necessarily fishing methods that determine the total take in a given day. My friends and I used lay nets back in the early 1980s. We stopped using them because it was too much work to set them up, retrieve, and repair. I also noticed recently that we are able to catch just as much (or more) menpachi by hook-and-line than we did with a net or by spear.

What’s needed most is adequate enforcement, which includes the timely response by enforcement officers when a complaint is called in. Early education also plays an important part, so that children are taught to appreciate responsible stewardship of natural resources.

Thank you for your consideration.  
Aloha,

Dean Sensui. Executive Producer.  
Hawai'i Goes Fishing.

**SB-1371-SD-1**

Submitted on: 2/18/2019 1:43:04 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian F. Funai	Individual	Oppose	No

Comments:

I am in strong opposition to this bill and the prohibition of the use of lay nets to take aquatic life. I agree that everyone wants sustainable fisheries but I believe the proponents of this bill are misguided in their effort to achieve that by eliminating the use of laynets. The proper use of laynets allows the most effective method of obtaining food for the citizens of Hawaii. Like all things that are in control and in use at the discretion of human beings, like cars, development, guns, money, etc., improper use and abuse will be a problem. However, we don't prohibit the use of these things that we use as part of our daily lives. To many of us here in Hawaii, obtaining fish and eating fish that are provided by the use of laynets to sustain ourselves and others is part of our daily lives.

If we are to prohibit laynet fishing across the board, we are on our way to eliminating people who possess these very important skills that many citizens rely on for subsistence. We ALL may very likely rely on these people and their skills in the event of a catastrophic event that prevents us from importing 80% of our food as we normally do. The loss of these people and their skills is equal to the loss of the skills and knowledge of Polynesian ocean navigation by the Hawaiian people. Will we also need to turn to our friends in the South Pacific again to learn how to simply feed ourselves?

What we really need is effective management and not bans or management actions that are really meant to eliminate fishing from the lives of the people of Hawaii. Proposing that the use of lay nets to take aquatic life should be a misdemeanor offense and imposing a mandatory minimum period of imprisonment of one day or, for a first offense and/or a fine of no less than \$1,000 is just an example of someone's frustration that the DLNR/DAR has not been able to effectively manage the resource. The DLNR/DAR have not been given the tools, the staff, the funding and commitment from the Legislature to allow them to.

The fact that we are testifying in the Legislature on proposed legislation concerning rules and regulations should be a glaring wake up call for this Legislature. Predecessors of this present Legislature had the foresight to require that the DLNR/DAR follow the Hawaii Revised Statutes, Title 8. Public Proceeding and Records, Chapter 91 Administrative Procedure for Proposed Rulemaking. It is their job and they are supposed to have the technically qualified staff and public process for making rules being proposed in this legislation. Please not only let them do their job but give them what they need to do it.

Thank you for allowing me to testify in opposition to SB1371.

Brian F. Funai

**SB-1371-SD-1**

Submitted on: 2/18/2019 10:29:55 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William K. Chang	Individual	Oppose	No

Comments:

**SB-1371-SD-1**

Submitted on: 2/19/2019 7:43:25 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Warren Cortez	Individual	Oppose	No

Comments:



**SB-1371-SD-1**

Submitted on: 2/19/2019 10:54:07 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Craig Severance	Individual	Oppose	No

Comments:

I strongly oppose this bill. This bill appears to be based more on appeals to emotion than solid science. The current net regulations would be adequate with better outreach, education and enforcement. The proposed penalties are draconian. Lay netting has a long cultural history in Hawaii, and there is a valuable subsistence component from lay netting and crossnetting for low income local families. There needs to be better education about current regulations and local Hawaiian cultural protocols for sustainable fishing. The bill also raises significant native gathering rights issues. Please vote no. Craig Severance, Fisheries Social Scientist.

**SB-1371-SD-1**

Submitted on: 2/19/2019 12:20:18 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Randy Cheung	Individual	Oppose	No

Comments:

strong opposition. this bill effectively bans lay nets. there is no description of the permitting process. since there is no permitting process, one can assume no permits will be issued. Additionally, there are already many regulations in place regarding the use of lay nets, the problem is not lay nets, it is enforcement.

**SB-1371-SD-1**

Submitted on: 2/19/2019 6:55:50 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christy Kajiwara Gusman	Individual	Oppose	No

Comments:

I Oppose this legislation

**SB-1371-SD-1**

Submitted on: 2/19/2019 8:09:51 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Byon Nakasone	Individual	Oppose	No

Comments:

**SB-1371-SD-1**

Submitted on: 2/20/2019 8:55:07 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kurt Kawamoto	Individual	Oppose	No

Comments:

Strongly oppose. There are enough regulations on this activity. Enforcement of the existing regulations that were made with input from the community is needed not more rules and over the top punishment.

**LATE**

Testimony on SB1371 Relating to Lay Nets

Senate committee on the Judiciary

February 22, 2019

Chair Rhoads, Vice Chair Wakai, members of the Committee

I am Alton Miyasaka and I am OPPOSED to this measure

General comments

The Department of Land and Natural Resources (DLNR) testified that they support this measure but contradicted themselves. On one hand, they currently regulate lay nets by registration but on the other hand say a permit is necessary. The current registration performs the same function as a new permit would. The purpose of the registration is to identify the net owner, regardless if the owner is attending the net while in the water. The permit would serve this same function. The DLNR claims that their registration system is inefficient and problematic is curious. They already have the authority to change their system, if such is the case.

The DLNR testified that threatened and endangered species are killed or injured by this gear so higher penalties are needed. The killing or injuring of a threatened or endangered species would be subject to the higher penalties already established by federal and state laws. State law already requires attendance of the net while in the water. A new permit would not be any more effective in enforcement of the attendance requirement.

The committee should be aware that there are situations where an active animal in the net poses a significant safety risk to the net user to try and rescue. Also, rough weather conditions may make retrieval of the net unsafe.

The proper term for the use of lay nets would be through a license rather than through a permit. A license authorizes its bearer to participate in a fishery while a permit exempts the bearer from a prohibition. For example, a commercial fishing license authorized the licensee to commercially fish, usually over a year period. Permits are issued to qualified persons for a specific activity for a limited time. Licenses are renewable whereas permits are subject to the discretion of the Department and do not carry any vested rights. The legal distinctions between licenses and permits should be further clarified as applied in this measure.

Unless the measure is amended to require a license instead of a permit, it is unclear what a permit would accomplish that is not already implemented through the registration. The prosecution of these kinds of violations may be better handled through the existing civil resource violations authority instead of raising the penalty to a misdemeanor.

**LATE**

**SB-1371-SD-1**

Submitted on: 2/22/2019 6:26:26 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Balazs	Individual	Support	No

Comments: